

DISCUSSION, FURTHER FINDINGS OF FACT, AND CONCLUSIONS OF LAW

MSHA's interest in the Rushton mantrip dates back to sometime in 1984 when at least one inspector became concerned with whether it met the regulations in its present configuration. The matter began to come to a head in April of 1986 when an MSHA inspection party visited the mine to observe hoist operations. At that time they requested that Rushton relocate the brakecar to place it in by the mancar, i.e., switch the cars around. When Rushton balked at doing this, his "superiors" directed Inspector Reichenbach to issue the instant citation, which he did on June 23, 1986.

MSHA's concern over this configuration of the cars in the mantrip stems from the fact that the mancar has no independent braking system or anything else for that matter to stop it from running away down the slope should it become detached from the brakecar. While MSHA agrees that the coupling assembly, together with the two one-inch link safety chains appears to be a secure method of attaching the two cars, MSHA argues that in order to satisfy the cited regulation, the attachment must be permanent, or the mancar must be up-slope from the brakecar. Mr. Gossard, the chief witness for the Secretary at the hearing testified on direct examination at Tr. 59:

Q. Now, the mantrip car and the braking car are attached by means of a link aligner?

A. It's a pin and link arrangement, yes, sir.

Q. Okay. And, safety chains?

A. That's correct, bridle chains.

Q. And, in order for the mantrip car to come unattached from the braking car, would both of those devices have to fail?

A. Both devices, if they were both hooked up, initially, both devices would have to fail to cause a situation.

Q. And, in your opinion could that situation occur?

A. It may. I wouldn't want to bet thirty men's lives on that it wouldn't occur.

The key phrase in the above-quoted testimony is that "[i]t may", and that is the crux of the Secretary's case.